



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

company attempted to consolidate with a non-insurance company. Later the insurance company abandoned insurance by an amendment of its charter. The statute allows consolidation except between an insurance company and a company not engaged in insurance. ALABAMA CODE, § 3481. A stockholder of the sometime insurance company seeks to dissolve the consolidation. *Held*, that it be not dissolved. *Alabama Fidelity, etc. Co. v. Dubberly*, 73 So. 911 (Ala.).

A *de facto* corporation can be formed as well by the consolidation of two or more corporations as by original creation. See *George Lumber Co. v. Dougherty*, 214 Fed. 958; *Leavenworth v. Chicago, etc. Ry. Co.*, 134 U. S. 688. One of the requisites of a *de facto* consolidation is the legal possibility of a *de jure* one. *American Trust Co. v. Minnesota, etc. R. Co.*, 157 Ill. 641, 42 N. E. 153; *Kavanagh v. Omaha Life Ass'n*, 84 Fed. 295. But the fact that a company is prohibited from consolidating because it is an insurance company does not make its consolidation legally impossible. See *Continental Trust Co. v. Toledo, etc. R. Co.*, 82 Fed. 642, 650. Cf. *Blackburn v. State*, 3 Head (Tenn.) 690. Rather, the change of one of the consolidating corporations into an insurance company or, as was done in the principal case, the change of the insurance company into something else, was only a condition precedent to *de jure* consolidation, and does not prevent a *de facto* consolidation. Particularly is this true when the condition precedent was subsequently performed and the only defect was the inversion in time of the legal steps. Cf. *Toledo, etc. R. Co. v. Continental Trust Co.*, 95 Fed. 497, 506 ff. Therefore, if the other requisites for a *de facto* consolidation are present in the principal case, the court seems right in declaring that there is such a consolidation.

CORPORATIONS — DISTINCTION BETWEEN CORPORATION AND ITS MEMBERS — DISREGARDING THE CORPORATE FICTION — GARNISHMENT OF DEBT OWED CORPORATION IN ACTION AGAINST STOCKHOLDER. — The defendant formed a corporation in which he took forty-eight of the fifty shares. He was sole manager of its business and used its income for his own household expenses, rendering no accounts whatever. In garnishment proceedings against the defendant, the plaintiff sought to attach a debt owed to the corporation, on the ground that the corporation was merely a cloak to cover the incorporator's transactions. *Held*, that the attachment will be allowed. *McIlhenny v. Lampton*, 45 Wash. L. Rep. 22.

Courts are not inclined to read into incorporation statutes any requirement of good faith on the part of incorporators. See *Attorney-General v. American Tobacco Co.*, 55 N. J. Eq. 352, 369, 36 Atl. 971, 978; *Windsor Co. v. Carnegie Co.*, 204 Pa. St. 459, 464, 54 Atl. 329, 331. Cf. *Brundred v. Rice*, 49 Oh. St. 640, 32 N. E. 169. See 20 HARV. L. REV. 222. Hence any fraudulent motive on the part of the defendant in forming the corporation would seem not to prevent its valid formation. Nor could the defendant's conveyance of property to the corporation be considered a fraudulent conveyance, for exchange of an incorporator's assets for shares of stock is a sale for a consideration. See *Poster & Sons v. Commissioners of Inland Revenue*, [1894] 1 Q. B. 516. It may be suggested that the "corporate fiction" should be disregarded. But a corporation and its shareholders are distinct legal entities. *Parker v. Bethel Hotel Co.*, 96 Tenn. 252, 34 S. W. 209; *Gallagher v. Germania Brewing Co.*, 53 Minn. 214, 54 N. W. 1115; *Salomon v. Salomon & Co.*, [1897] A. C. 22; *Hall's Safe Co. v. Herring-Hall Marvin Safe Co.*, 146 Fed. 37. See 20 HARV. L. REV. 223; *supra*, 83. The property of the corporation cannot normally be attached to recover a debt against a shareholder. *Williamson v. Smoot*, 7 Martin (La.) 31. There is, however, a growing tendency to disregard the "fiction" of corporate entity, whenever in the opinion of the court greater justice can be secured thereby. *U. S. v. Milwaukee Refrigerator Transit Co.*, 142 Fed. 247; *Bank v. Trebein*, 59

Oh. St. 316, 52 N. E. 834. See 3 COOK, CORPORATIONS, 7 ed., § 663. It is submitted that justice can be done in the principal case without doing violence to so fundamental a conception of the law of corporations. It would have been more logical to have attached the shares owned by the defendant debtor, and in that way to have secured control of the corporation and its assets, including the particular debt in question. Such a procedure would have had the added advantage of being fair to any possible creditors of the corporation, whose interests are entirely disregarded by the mode of procedure actually sanctioned. If the incorporator is thereby enabled to prefer the creditors of his corporation, as against his personal creditors, it is simply the logical working out of an incorporation law which enables the individual to secure the advantages of corporate organization.

CORPORATIONS—STOCKHOLDERS—INDIVIDUAL LIABILITY TO CORPORATION AND CREDITORS—EFFECT OF FAILURE TO PAY STATUTORY PERCENTUM OF SUBSCRIPTION.—The defendant subscribed for one hundred shares of the stock of a corporation without complying with the statutory provision that "10 % upon the amount subscribed" should be paid to the directors. N. Y. CONSOL. LAWS, ch. 59, § 53. The defendant thereafter acted as a director of the corporation and received dividends for a period of years. The corporation became bankrupt; and the trustee seeks to recover the amount unpaid on defendant's stock. *Held*, that the trustee may recover. *Jeffery v. Selwyn*, 115 N. E. 275 (N. Y.).

The statute involved is a common one and has been often interpreted, but no trace of uniformity is discernible in the decisions. See 1 COOK, CORPORATIONS, 7 ed., §§ 172-175. The easy holding is that a failure to pay the required ten percentum renders the subscription void. *Van Schaick v. Mackin*, 129 App. Div. 335, 113 N. Y. Supp. 408. The result, however, is very unsatisfactory when the corporation is in the hands of a representative of the creditors. The opposite extreme is reached by the cases holding that the corporation may enforce the subscription even when the rights of creditors are in no way involved. *Pittsburg, etc. R. Co. v. Applegate*, 21 W. Va. 172. The objection to such interpretation is that little effect is thereby given to the statute. A middle ground may be supported. The purpose of the statute was obviously to benefit creditors by assuring them of tangible assets and *bona fide* stockholders. 1 MORAWETZ, CORPORATIONS, 2 ed., § 72. The desired pressure on the stockholder to pay and the corporation to require payment can be reached in the absence of creditor's claims by refusing to allow a recovery by either party against the other when the ten percentum has not been paid. There is no hardship because the parties are *in pari delictu*. This result has been reached in New York. *N. Y., etc. R. Co. v. Van Horn*, 57 N. Y. 473. When the corporation is in the hands of a representative of the creditors, however, to allow, as the principal case does allow, recovery by the representative furthers rather than defeats the legislative purpose.

CORPORATIONS—STOCKHOLDERS—RIGHTS INCIDENT TO MEMBERSHIP—RIGHT TO HAVE A FAIR ELECTION OF OFFICERS.—The minority shareholders in a corporation succeeded in electing their candidate by voting through proxies. It had been an unbroken custom to cast votes personally. *Held*, that a new election must be ordered. *In re Real Estate Owners, etc. Ass'n*, 56 N. Y. L. J. 2004 (N. Y. Sup. Ct., Spec. Term).

There is no inherent right in a member of a corporation to cast his vote by proxy. *Commonwealth v. Bringham*, 103 Pa. 134. See *Phillips v. Wickham*, 1 Paige (N. Y.) 500, 508; 1 MORAWETZ, CORPORATIONS, 2 ed., § 486. However, this privilege may be conferred by the articles of incorporation or even the by-laws. *People v. Crossly*, 69 Ill. 195; *Market St. Ry. Co. v. Hellman*, 109 Cal.